UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/388,197	04/27/99	LAZARUS K	ALX-103CN2CP

021323
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MM71/0906

EXAMINER
BUDD,M

ART UNIT	PAPER NUMBER
2834	

DATE MAILED: 09/06/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

09/300937

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DATE MAILED:

Below is a communication from the *EXAMINER* in charge of this application
COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check only a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 707.07(f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☒ The proposed amendment(s) will not be entered because:
   (a) ☒ they raise new issues that would require further consideration and/or search. (see NOTE below);
   (b) ☐ they raise the issue of new matter. (see NOTE below);
   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: Completely new claim would require completely new examination.
4. ☐ Applicant's reply has overcome the following rejection(s): _____
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
6. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: 35-54.
   Claim(s) withdrawn from consideration: _____.
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). ____.
11. ☐ Other: _____

MARK U. BODD
PRIMARY EXAMINER
ART UNIT 212

FORM PTOL-303 (Rev. 11/00)

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is vague and indefinite in that "said inactive element" has no proper antecedent basis.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-6, 8-10, and 13-17 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Hathaway (figs. 22-25) Chida (fig. 10) or Itsumi (figs. 3 & 4).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 11, 12 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hathaway, Chida or Itsumi in view of Lazarus.

Hathaway, Chida and Itsumi teach the basic actuator but not shear coupled to an object or coupled to an insulator. However, Lazarus teaches using a piezoelement strain coupled via an

insulator to damp a structure. To use the specific sigmoidal bending mode transducer of Hathaway, Chida or Itsumi in place of the conventional bending mode transducer of Lazarus would be the mere substitution of headers and would have been obvious to one of ordinary skill in the art. Likewise, to put Hathaway, Chida or Itsumi to word in the known system of Lazarus would have been within the skilled expected of the routineer and therefore obvious to one of ordinary skill in the art.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hathaway, Chida or Itsumi.

Hathaway, Chida and Itsumi teach the sigmoidal bender is well known per se but don't provide encapsulation. However, encapsulating a piezoelectric device to protect it from a hostile environment and electrically insulate it is well known per se (official notice taken), and thus to encapsulate Hathaway, Chida or Itsumi for at least these reasons would have been obvious to one of ordinary skill in the art.

Applicants general traversal of the restriction requirement is noted, however applicant has not pointed out any specific error in the requirement. Therefore, the restriction is hereby repeated and made final.

Further cited of interest are Okayama, Toro Lazarus Kiraly, Ellett and Krautwald.

Budd/ds

09/01/00

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ART UNIT 212